

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff/Respondent,

v.

ISAAC BARAJAS,
Defendant/Petitioner.

NO. CR-08-6008-EFS
(NO. CV-10-5127-EFS)

**ORDER DENYING PETITION FOR
HABEAS RELIEF UNDER 28 U.S.C.
§ 2255 ON MOTION TO SET ASIDE,
VACATE, OR CORRECT SENTENCE**

Before the Court, without oral argument, is Petitioner Isaac Barajas' Petition for Habeas Relief Under 28 U.S.C. § 2255 on Motion to Set Aside, Vacate, or Correct Sentence. (ECF No. 123.) Mr. Barajas contends the sentence is invalid because 1) the Court incorrectly calculated the base offense level by not accurately reflecting his role in the offense, and 2) it violates the Eighth Amendment's prohibition against cruel and unusual punishment. As explained below, the Court denies the petition.

A. Background

On February 123, 2008, Mr. Barajas was charged with distributing a mixture and substance containing at least 150 grams but less than 500 grams of actual methamphetamine in violation of 21 U.S.C. § 841 (a)(1) (ECF No. 1.) This charge had a mandatory-minimum sentence of ten years.

21 U.S.C. § 841(b)(1)(A). Mr. Barajas entered a guilty plea without a plea agreement, to this charge on September 30, 2008. (ECF No. 71.) The Court accepted the plea as knowing, intelligent, and voluntary. (ECF No. 72.) The Court sentenced Mr. Barajas to 120 months imprisonment on February 18, 2009. (ECF No. 99.)

B. Review Standard

The Court examines a § 2255 motion and the record to determine whether summary dismissal is warranted. Rules Governing § 2255 Proceedings for the U.S. Dist. Cts 4(b). "If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief," the Court must deny the motion. *Id.*; see also *Baumann v. United States*, 692 F.2d 565, 571 (9th Cir. 1982).

C. Analysis

Viewing the petition and record under this standard, the Court denies Mr. Barajas habeas relief. First, in relation to his first ground for relief, Mr. Barajas argues that the Court violated 18 U.S.C. § 3553(a) by failing to accurately assess his role in the offense when calculating the base offense level. However, Mr. Barajas agreed at sentencing that the base offense level was thirty four; and upon review of the record, the Court determines that the offense level calculations were correct. Moreover, when considering all of the § 3553(a) factors, the Court imposed a sentence lower than the applicable U.S. Sentencing Guideline range, which was 151 to 188 months. In fact, the Court imposed the shortest sentence possible: the 120-month mandatory-minimum sentence

1 required for Mr. Barajas' methamphetamine conviction. 21 U.S.C. §
2 841(b)(1)(A).

3 Second, the Court concludes the record plainly establishes that Mr.
4 Barajas' 120-month sentence does not contravene the Eighth Amendment's
5 prohibition against cruel or unusual punishment. The Eighth Amendment
6 provides, "[e]xcessive bail shall not be required, nor excessive fines
7 imposed, nor cruel and unusual punishments inflicted." U.S. Const.
8 Amend. VIII. "[O]utside the context of capital punishment, successful
9 challenges to the proportionality of particular sentences have been
10 exceedingly rare." *Ewing v. California*, 538 U.S. 11, 21 (2003) (quoting
11 *Rummel v. Estelle*, 445 U.S. 263, 272 (1980)). Although Mr. Barajas'
12 longest jail stay before this federal conviction was only two days, the
13 imposed ten-year mandatory-minimum sentence is not cruel and unusual
14 because the unobjected-to facts establish that Mr. Barajas sold
15 methamphetamine on at least two occasions. See *United States v. Labrada-*
16 *Bustamante*, 428 F.3d 1252, 1265 (9th Cir. 2005) (determining that a
17 twenty-year mandatory minimum sentence under 21 U.S.C. § 841 did not
18 constitute a cruel and unusual punishment); *United States v. Barajas-*
19 *Avalos*, 377 F.3d 1040, 1060 (9th Cir. 2004) (affirming 360-month sentence
20 for conspiracy to manufacture methamphetamine even though the defendant
21 had never before been convicted of either a felony or a crime of
22 violence).

23 **D. Conclusion**

24 Accordingly, it plainly appears from the petition and record that
25 Mr. Barajas is not entitled to the requested habeas relief. For the
26 above-given reasons, **IT IS HEREBY ORDERED:**

2. The Court **DECLINES** to issue a certificate of appealability.

3. The related civil case file is to be **CLOSED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide a copy of this Order to Petitioner and counsel.

DATED this 16th day of December 2010.

S/ Edward F. Shea

EDWARD F. SHEA

United States District Judge

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